

**In the United States District Court
for the Southern District of Georgia
Savannah Division**

FILED
John E. Triplett, Acting Clerk
United States District Court
By CAsbell at 9:48 am, Apr 29, 2020

UNITED STATES OF AMERICA

v.

CR 417-050-2

JOSHUA SCOTT


ORDER

On February 27, 2020, Defendant Joshua Scott filed a motion to appoint counsel to help him seek relief pursuant to a new rule of constitutional law announced in United States v. Davis, -- U.S. --, 139 S. Ct. 2319 (June 24, 2019). On March 24, 2020, the Court concluded that Scott was attempting to attack the legality of his sentence and issued an Order informing Scott of its intention to recharacterize his motion as a petition for habeas corpus relief under 28 U.S.C. § 2255. Scott was ordered to notify the Court within thirty (30) days whether he "contests the recharacterization of his motion, whether he wishes to withdraw the motion, or whether he wishes to amend the motion to assert any other § 2255 claims aside from his Davis claim." Further, Scott was informed that his failure to respond within thirty days would result in his motion being recharacterized as a § 2255 motion and docketed as a new civil action.

The thirty-day response period expired on April 27, 2020. See Fed. R. Civ. P. 6(d) (allowing three additional days for response when service is effected by mail). On April 28, 2020, the Court, in accordance with its Order, recharacterized Scott's motion as a § 2255 motion and docketed it as a new civil action. See Scott v. United States, 4:20cv92 (S.D. Ga. Apr. 28, 2020). On the same day, the Court docketed a letter from Scott opposing the recharacterization of his motion as a § 2255 motion. Dkt. No. 302. While the letter was docketed on April 28, 2020, the docket entry reflects that it was actually received by the Clerk on April 27, 2020. See id.

The Court concludes that Scott timely opposed the recharacterization of his motion. Accordingly, the Court **VACATES** the recharacterization and **DIRECTS** the Clerk to terminate the resulting civil action, case no. 4:20cv92. Should Scott choose to file a § 2255 in the future, it will be treated as his first such motion.

SO ORDERED, this 29th day of April, 2020.



HON. LISA GOBBEY WOOD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA